

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TRACY Y. DAVENPORT,

Plaintiff,

v.

Case No. 10-11350

Honorable Denise Page Hood

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE’S APRIL 11, 2013,
REPORT AND RECOMMENDATION [#32]
AND DENYING MAGISTRATE JUDGE’S AUGUST 31, 2012, REPORT
AND RECOMMENDATION [#27]**

This matter is before the Court on Magistrate Judge R. Steven Whalen’s Reports and Recommendations on Plaintiff Tracy Y. Davenport’s Motion for Attorney Fees under the Equal Access to Justice Act (“EAJA”) [**Docket No. 21, filed September 26, 2011**] and Motion for Attorney Fees pursuant to § 206(b)(1) of the Social Security Act [**Docket No. 28, October 17, 2012**]. For the reasons stated below, the Court **REJECTS** the Magistrate Judge’s August 31, 2012, Report and Recommendation [**Docket No. 27**], and **ACCEPTS** and **ADOPTS** the Magistrate Judge’s April 11, 2013, Report and Recommendation in its entirety [**Docket No. 32**]. Plaintiff’s Motion for Attorney Fees under the EAJA [**Docket No. 21, filed September 26, 2011**] is **DENIED**. Plaintiff’s Motion for Attorney

Fees pursuant to § 206(b)(1) of the Social Security Act [**Docket No. 28, October 17, 2012**] is **GRANTED**.

The standard of review by the district court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court “shall make a *de novo* determination of those portions of the report or the specified proposed findings or recommendations to which an objection is made.” 28 U.S.C. § 636(B)(1)(c). The Court “may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate.” *Id.*

“[O]nly those specific objections to the magistrate’s report made to the district court will be preserved for appellate review; making some objections but failing to raise others will not preserve all the objections a party may have.” *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). “An ‘objection’ that does nothing more than state a disagreement with a magistrate’s suggested resolution, or simply summarizes what has been presented before, is” insufficient. *Aldrich v. Bock*, 327 F. Supp. 2d 743, 747 (E.D. Mich. 2004). A party’s failure to file any objections waives his or her right to further appeal, *see Smith*, 829 F.2d at 1373, and relieves the Court from its duty to review the matter independently. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Plaintiff initially filed a Motion for Attorney Fees under the EAJA [**Docket No. 21, filed September 26, 2011**]. In the Reply to the Response to the Motion for Attorney Fees under the EAJA, Plaintiff requested fees in the amount of \$12,036.16 [**Docket No. 26, filed October 13, 2011**]. In the August 31, 2012, Report and Recommendation [**Docket No. 27**], the Magistrate Judge recommended that the Court reduce the request by 25% to grant fees in the amount of \$9,027.12, because the number of hours claimed is beyond what is considered reasonable. The Magistrate Judge also recommended that if the Plaintiff owes any pre-existing debts to the Government, the fees will offset by the amount of the debt, and the remainder paid to the attorney.

Plaintiff subsequently filed a Motion for Attorney Fees Pursuant to §206(b)(1) of the Social Security Act [**Docket No. 28, October 17, 2012**] requesting \$14,304.75 in attorney fees. The amount represented 25% of the award Plaintiff received as total past-due benefits after prevailing on remand when the Administrative Law Judge issued a favorable decision. In the April 11, 2013, Report and Recommendation [**Docket No. 32**], the Magistrate Judge recommended that the Court grant Plaintiff's Motion and award fees in the amount of \$14,304.75, to be refunded or paid directly to Plaintiff. The Commissioner does not object to the amount claimed under § 206(b)(1) of the Social Security Act, 42 U.S.C. §

406(b)(1). The Court has had an opportunity to review this matter and finds that the Magistrate Judge reached the correct conclusion for the proper reasons. The Court agrees with the Magistrate Judge that \$14,304.75 is a reasonable amount of fees, and **ACCEPTS** and **ADOPTS** the April 11, 2013, Report and Recommendation [**Docket No. 32**].

The Court has not entered an order on the August 31, 2012, Report and Recommendation [**Docket No. 27**]. Accordingly, in light of the Magistrate Judge's recommendation in the April 11, 2013, Report and Recommendation [**Docket No. 32**], the Court **REJECTS** the August 31, 2012, Report and Recommendation [**Docket No. 27**] and **DENIES** the Motion for Attorney Fees under the EAJA [**Docket No. 21, filed September 26, 2011**].

The Court notes that the Magistrate Judge also notified the parties of their right to "seek review of this Report and Recommendation" and reminded them of the timeline in which to do so. Neither Plaintiff nor Defendant filed any objections to the Magistrate Judge's August 31, 2012, and April 11, 2013, Reports and Recommendations. The Court accepts the Magistrate Judge's April 11, 2013, Report and Recommendation as this Court's findings of fact and conclusions of law.

Accordingly,

IT IS ORDERED that the August 31, 2012, Report and Recommendation of Magistrate Judge R. Steven Whalen [**Docket No. 27**] is **REJECTED**.

IT IS FURTHER ORDERED that the April 11, 2013, Report and Recommendation of Magistrate Judge R. Steven Whalen [**Docket No. 32**] is **ACCEPTED** and **ADOPTED** as this Court's findings and conclusions of law.

IT IS FURTHER ORDERED that Plaintiff's Motion for Attorney Fees under the EAJA [**Docket No. 21, filed September 26, 2011**] is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Attorney Fees pursuant to § 206(b)(1) of the Social Security Act [**Docket No. 28, October 17, 2012**] is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff be awarded a total amount of \$14,304.75 in attorney fees.

IT IS SO ORDERED.

s/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: September 28, 2015

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 28, 2015, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager